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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,777	10/09/2001	Max Schaldach	117163.00028	6887

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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06/27/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
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Office Action Summary

Application No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29,30,47,48,65,73-75 and 77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>APPENDIX</u> |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5,6,9,10,12,13,15-18,20,21,23,24,26,27,29-32,34,35,37-40,42,43,45-50,52,53,55-58,60,61,63-65 and 67-85.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 31,32,34,35,37-40,42,43,45-50,52,53,55-58,60,61,63-65,67-72,76 and 78-85.

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 6, 2007 has been entered.

Claims 31, 32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65, 67-72, 76 and 78-85 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 19, 2006.

Claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47 and 48 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt (DE 19834956). Alt, as shown in the attached appendix (which is based on the equivalent U.S. Patent 6,398,805 only because this figure is clearer than the equivalent figure in the foreign patent), discloses bar elements and connecting bars characterized that all of the first and second bar element portions of the first annular support portion extend in the

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longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner (since they are all concave), and wherein all of the first and second bar element portions of the first annular support portion extend to an identical extent and in a non-offset manner in the longitudinal direction wherein and the first and second bar elements are entirely concave over the entire length of the bar element portion. As to claim 5, the bar element portions are inherently adapted to keep stresses below a plastic deformation limit upon being moved to the implantation location by being curved in a such a way.

Claims 12, 13, 15-18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Hoefer (DE 19840645). Alt fails to disclose the direction of curvature of the bar element portions changing in the longitudinal direction of the stent. However, Hoefer teaches that the direction of curvature of the bar element portions should change in the longitudinal direction of the stent (as shown in figure 2 wherein the curvature alternates between concave and convex in the longitudinal direction of the stent). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to change the direction of curvature

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of the Alt bar element portions so that it too would have this advantage.

Claims 65, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319). As to claim 65, Alt fails to disclose the connecting bars engaging a central region of the bar element portions and being adapted to the curvature thereof. However, Kveen et al. teach that the connecting bars should be so constructed (e.g. connecting bar 1032 in figure 13). This arrangement has the apparent advantage of increasing the flexibility of the stent in various directions. It would have been obvious to so shape the Alt connecting bars so that it too would have this advantage. As to claim 73, Alt fails to disclose connecting bars that are substantially rectilinear. However, Kveen et al., in figure 9, teach that the connecting bars on one end of the bar element portions at 621, 623 should be so shaped (such that they are short and rectilinear) as indicated in col. 11, line 28-31, apparently in order to obtain the advantage of improving the supporting ability of the stent. It would have been obvious to so shape the Alt connecting bars on one end of the bar element portions so that it too would have this advantage.

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Claims 75 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (DE 19834956) in view of Kveen et al. (6,261,319) as applied to claim 73 above, and further in view of Hoefer (DE 19840645) for the reasons set forth in two paragraphs above.

Applicant's arguments filed June 6, 2007 have been fully considered but they are not persuasive. The election requirement was made FINAL in the previous Office Action. However, as further explanation, claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first (MPEP 806.04). For example, claim 31 recites limitations disclosed for a first species (figure 1) while a claim 48 recites limitations disclosed only for the second species (e.g. figure 3) and not the first (figure 1). Applicant argues that claims 23, 24 and 47 are generic to all species. It was agreed previously that these claims read on the elected species and these claims have been (and are) examined on the merits.

As to the rejections based upon the prior art, the claims require the bar element portions of the first annular support portion to extend curvedly in an identical concave or convex

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arcuate manner (claim 1, lines 13-14). That is, they must be all concave or all convex. The claims do not require the radius of curvature of the bar element portions to be identical. In other words, the claims do not require the bar element portions to have the same tightness of curvature. Therefore the feature described in col. 4, lines 24-27 of U.S. Patent 6,398,805 is not precluded by the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731

APPENDIX

